IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.7218/2006.

Roshan Lal

Vs.

Laxmi Prakash

Date of Order:- 28/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Anil Mehta for the petitioner.

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The petitioner has challenged the order dated 5/9/2006 whereby his application for amendment in the written statement was dismissed.

Learned counsel for the petitioner has argued that the trial court erred in law in not accepting his application even though the amendment was necessary for deciding the controversy effectively. In the said amendment, petitioner wanted that the amount of Rs.75,000/- spent by him in repairs of the shop may be adjusted and may be taken into consideration while deciding the suit. It was argued that the fact about the repairs undertaken by the petitioner has been admitted

by the plaintiff-respondent in the plaint itself. If this amendment is allowed to be incorporated, the alleged condition of non-payment of Rs.35,000/- spent by the petitioner to the respondent would stand forfeited and the right of the plaintiff to get the mortgaged shop redeemed would also come to an end. It was submitted that there was no such delay and rather the plaintiff in any case would be compensated by payment of a suitable amount.

Having heard learned counsel for the petitioner and perused the record, I find that in this case, suit was filed on 14/9/2004 and more than three adjournments were taken by the petitioner. He filed written statement on 1/12/2004. The issues were framed on 26/1/2005. The plaintiff concluded his evidence on 25/2/2006 while reserving the right to rebuttal. The defendant took several adjournments and, thereafter, on 6/5/2006 filed written statement. The arguments were concluded on 27/5/2006 and 31/5/2006 was the date fixed for the evidence in rebuttal. But on 31/5/2006, respondent submitted an application under Order 14 Rule 5 read with Section 151 CPC. Proposes

issues were not considered to be necessary for the decision hence, the application was rejected on 19/7/2006 and the matter was fixed on 2/9/2006 for final arguments. It was on that date, the petitioner filed an application an application seeking amendment in written statement whereas the written statement was filed way back on 1/12/2004. As per the own admission of the petitioner, fact of repairs undertaken by the petitioner was very much mentioned in the plaint and, therefore, at the time of filing of written-statement also those facts were known to the defendants-petitioners. He cannot now be permitted to seek amendment. Although, it is true that amendment can be permitted at any stage of the proceedings but at the same time, rights of the parties shall have to be decided on the touchstone of the prejudice. In this case, written statement was originally filed on 11/2/2004 and the alleged repairs were carried by the petitioner according to his own case much prior to filing of the written statement. The petitioner having not asserted such facts in the written statement cannot be now at this stage permitted

to do so. In fact earlier also the petitioner had filed an application for framing additional issues but that application was rejected. He filed a writ petition which was also dismissed by this court on 28/4/2004. Filing of the amendment application at this belated stage is nothing but his delaying tactic to delay the proceedings of the civil suit which cannot be appreciated.

I do not find any merit in this writ petition. It is accordingly dismissed in limine.

(MOHAMMAD RAFIQ), J.

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